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No. 330

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

TWIN CITY PIPE LINE COMPANY

and

INDUSTRIAL OIL & GAS COMPANY,
PETITIONERS,

vs.

HARDING GLASS COMPANY,
RESPONDENT

MOTION OF RESPONDENT FOR LEAVE TO CALL THIS COURT'S ATTENTION TO A MISTAKE OF PETITIONERS' COUNSEL MADE IN THE ORAL ARGUMENT

JOSEPH R. BROWN,
JAMES B. McDONOUGH,
Counsel for Respondent.

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Comes the respondent, by its counsel, and by permission of the Court suggests:

Counsel for the petitioners, in his oral argument before this Court, claimed that there was evidence in this record tending to prove that the petitioners had ex-

pended, by reason of this contract, large sum of money in the development of gas *for the respondent.*

Respondent contends that there is no evidence to support that contention.

THE RECORD

The petitioners in their complaint (R. 6) did allege that the Twin City Pipe Line Company, in order adequately to supply the Harding Glass Company with gas, had caused the Industrial Oil & Gas Company to expend in excess of $64,000.00. That allegation was specifically denied in the answer of the respondent (R. 17). It is the respondent's contention that petitioners offered no evidence to support said allegation. Petitioners' only witness (R. 154-155) did testify that nineteen new wells had been drilled and gave the dates and cost of these wells (R. 155), *but seven of these wells* (R. 155) *were drilled before the contract,* and said witness nowhere stated that the said nineteen wells were drilled *for the Harding Glass Company under this contract;* but, on the contrary, said evidence (R. 155) shows that said Industrial Oil & Gas Company expended nearly as much money in drilling wells *in the eight months preceding the contract* as it did *in the two years and four months following said contract.* See figures on page 155. Petitioners made no effort to show the relative or comparative amounts of gas consumed by other industries, factories, and the general public. There is not a scintilla of evidence in the record *to show that the expense of development was any greater because of the existence of this contract.*

Besides, the development was made by the Industrial Oil & Gas Company, and the contract in controversy did not obligate that company to make any development whatever *for the Harding Glass Company.*

The respondent respectfully prays that the above suggestions be considered and hereby agrees that petitioners may make any desired response hereto.

Respectfully submitted,

JOSEPH R. BROWN,
JAMES B. MCDONOUGH,
Counsel for Respondent.